No. 4075

United States

Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt.

L. C. REAM, HAZEL MOWERS, MABEL CONNOR, H. E. WOODLAND, MAUDE MOWERS, OSCAR LANTOR, CHARLES THEIS, ALEXANDER STEPHENS, O. W. WITTMER, T. S. LANE, DAVID ACKERMAN, STANLEY HODGMAN, AUGUSTA W. HOWELL,

Appellants,

vs.

W. S. McCREA, as Trustee in Bankruptcy of the Estate of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Names and Addresses of Attorneys of Record.

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Attorneys for Appellees. [1*]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812—IN BANKRUPTCY.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation,

Bankrupt.

*Page-number appearing at foot of page of original certified Transcript of Record.

Stipulation and Agreed Statement.

In conformity with Equity Rule No. 77, the following is a statement of the case and shall be treated as supersedeas for the purposes of the appeal all parts of the record other than the Referee's certificate, the order of the Referee, the opinion of the District Judge, and the order of the District Judge from which the appeal is taken, to wit:

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3612.

In the Matter of IRVING WHITEHOUSE COMPANY,

Bankrupt.

STIPULATION.

IT IS AGREED between David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Oscar Lantor, Maude Mowers, Charles Theis, Alexander Stephens, Augusta W. Howell, T. S. Lane, O. W. Wittmer, and H. Sidney Collins, claimants for the return of certain securities, or in lieu thereof, [2] the amount realized therefrom, and W. S. McCrea, Trustee in Bankruptcy, that from the evidence which has been introduced before the Referee as to said claims, the following are the facts and may be considered as the sole facts in deciding the questions involved in said petition, to wit:

For a period of some years prior to the 3d day of August, 1921, Irving Whitehouse Company, the Bankrupt, had carried on the business of stock-broker, and as a part of such business was accustomed to buy and sell on behalf of its customers, various securities on the New York Stock Exchange. The purchases and sales were made by its New York correspondent, E. F. Hutton & Co., a member of said New York Stock Exchange, in the manner customarily followed in such transactions, and in no case did Hutton & Co. come in contact with or know the Irving Whitehouse Company's customer, but all transactions were carried on between the two corporations in the respective firm names.

The method of dealing may be generally outlined as follows: In cases where the customer of Irving Whitehouse Company desired to make the purchase and pay the full purchase price at once, such order, together with a sum equivalent to the purchase price was given to the bankrupt. An order was forwarded by it to Hutton & Co. who made the purchase, and upon receipt of the amount paid out by it or of collateral equal to the same, forwarded the securities to Irving Whitehouse Company who made delivery to its customer. If, however, a marginal transaction was desired, the method of dealing was different. The customer made his order and at the time deposited with the bankrupt as collateral either cash or securities. The bankrupt then forwarded an order and often the collateral to Hutton & Co., who made the purchase. In all such [3] cases it was Hutton & Co.

who made the actual purchases and put up the necessary funds, for which Irving Whitehouse Company, not the customer, was debited, and to afford the necessary security, Irving Whitehouse Company forwarded from time to time certain stocks and bonds as collateral, and in this connection it may be said that it was necessary for them at all times to maintain a certain ratio between their debt and the collateral held by Hutton & Co. to secure it, and at any time the collateral was deemed insufficient to afford adequate protection it became necessary to add to the amount before additional orders would be executed or securities forwarded. In all marginal transactions it was customary for Hutton & Co. to hold the securities purchased with the collateral they held to secure the Irving Whitehouse debt. If a full payment was made thereafter the amount was forwarded to Hutton & Co. and the securities released and sent on to Irving Whitehouse Company. If sales were made of the collateral held by Hutton & Co., the amount received was credited by Hutton & Co. in reducing the amount of the debt owed them. In all marginal dealings it was agreed between Irving Whitehouse Company and the customer that the securities purchased as well as the collateral put up by the customer to secure his account with the bankrupt might be rightfully repledged. As a matter of fact almost all of the collateral held by Hutton & Co. to secure the Irving Whitehouse Company account was composed either of the securities bought by marginal

traders or securities deposited by them as collateral. The permission to repledge did not, however, confer upon the bankrupt the right of doing anything more than merely repledging the securities, and it was understood that if the amount due on any account was paid in full, the bankrupt must at once deliver either the identical securities put up as collateral, [4] or purchase, or others exactly similar thereto. In no event did the bankrupt have the right to sell such securities or authorize Hutton & Co. to do so, unless for the protection of the customer's account. For some time Irving Whitehouse Company had been accustomed to speculate on the market through an account known on its books as "Account 40." Sales and purchases were made for the benefit of the company through this account, and it developed that often sales were made of securities owned not by Irving Whitehouse Company, but by its customers, so that the total actually held by Hutton & Co. for the customers of Irving Whitehouse Company was always much less than the total credited on the bankrupt's books to its customers. This total was likewise cut down by the following course of dealing: If, for instance, the bankrupt received orders to buy 200 shares of a certain stock, and on the same day an order to sell 100 shares, these orders would be forwarded to Hutton & Co. who would go upon the market and buy for Irving Whitehouse Company the difference, that is, 100 shares only, the long and short orders in such cases being balanced as to the remainder by book entries.

Due to various reasons, for some time prior to August 3, 1921, Irving Whitehouse Company was insolvent and had taken to the practice of pledging with Hutton & Co. securities left with it for safe keeping or for sale, which it had no right to pledge. Moreover, at least once before that date, the bankrupt directed Hutton & Co. to sell certain securities held on its account but which did not belong to it but were the property of its customers pledged under the understanding outlined above. As a result of these transactions, on the aforesaid date Irving Whitehouse Company was indebted to its customers who were dealing in eastern stocks and bonds through Hutton & Co. either on marginal or cash basis, in the sum of [5] $211,098.27, computed on the basis of what the securities would have been worth on said August 3, 1921. In addition to this, the company was indebted to various other creditors in excess of the securities held by such concerns to an amount of approximately $90,000. None of these debts have been paid. On the said 3d day of August, 1921, at the suit of one of the creditors, a receiver, F. K. McBroom was appointed by the Superior Court of Spokane County, Washington, and shortly after his appointment he instructed Hutton & Co. to sell out all securities held in the Irving Whitehouse account. The securities, the price at which they were sold, and the exact time of the respective sales, are shown by the list set out below:

SCHEDULE "A."

No. of Shares	Description	Price	Amount credited to Irving Whitehouse Co. Less E. F. Hutton Com. & Tax. Sold Amount	Date Executed	Time Executed
10	Mexican Petroleum	105¾	1,055.60	Aug. 5, 1921	11.27
23	Kennicott Copper	18⅝	424.01	Aug. 5	11.27
10	General Motor 6% Deb	63⅞	636.85	Aug. 5	12.42
20	Montana Power	44¾	891.20	Aug. 5	2.39
30	Missouri Pacific Pfd.	40⅛	1,198.05	Aug. 5	11.27
30	Northern Pacific Ry.	76¾	2,296.80	Aug. 5	11.27
10	Pennsylvania Ry.	36⅞	367.05	Aug. 5	12.49
4	Pacific Oil	36¼	143.84	Aug. 5	11.27
5	Pan American Pete B	42	208.88	Aug. 5	12.28
1/10	" " " "	40¾	3.04	Aug. 5	1.02
8	Pullman Company	94½	754.48	Aug. 5	1.18
17	" "	93¼	1,582.02	Aug. 5	2.06
25	Pure Oil	26⅜	655.35	Aug. 5	1.51
20/50	" "	25½	9.16	Aug. 5	2.12

No. of Shares	Description	Price	Sold Amount	Date Executed	Time Executed
10	Pierce Arrow	14⅛	139.32	Aug. 5, 1921	12.49
15	Royal Dutch	51	762.63	Aug. 5	12.49
14	U. S. Rubber	52	725.34	Aug. 5	11.27
2½	Retail Stores	53⅝	132.94	Aug. 5	1.50
10	Southern Ry.	19⅞	196.85	Aug. 5	2.43
15	Sullivan	41	612.15	Aug. 5	2.27
10	"	42	418.10	Aug. 9	12.43
15	Sears Roebuck	65⅛	974.03	Aug. 5	12.27
23	Swift & Company	98	2,250.00	Aug. 5	
4⅓	Studebaker	78⅛	337.34	Aug. 5	11.47
15	U. S. Food	17⅛	254.03	Aug. 5,	12.28
5	United Smelting Pfe.	36⅞	183.18	Aug. 9	10.30
1	United Pacific	120½	119.46	Aug. 5	12.28
11	Westinghouse Elec.	43¾	479.36	Aug. 5	1.55
300 (100	Denny Oil	12	10.96	Aug, 5	11.06
(200	" "	10	18.92	Aug. 5	11.06
20	Silver King of Arizona (New	5	.96	Aug. 5	11.08
(100	Silv. King of Ariz. Old)				

No. of Shares	Description	Price	Sold Amount	Date Executed	Time Executed
1000	Canada Copper	35	341.00	Aug. 5, 1921	10.56
1000	Canada Copper	30	292.00	Aug. 5	10.56
33	" "	28	8.16	Aug. 5	10.56
11	Columbia Graphaphone	4 3/8	46.69	Aug. 5	12.03
3	Anglo American Oil	15 1/4	44.71	Aug. 5	11.10
30	New Cornelia	13 1/2			
		(Boston)	400.42	Aug. 5	10.55
50	Transcontinental Oil	7 5/8	375.50	Aug. 5	12.11
15	American Ship & Commerce	6 3/4	99.52	Aug. 8	2.52
30	General Motors	10 1/4	301.80	Aug. 5	11.27
25	Invincible Oil	7 1/8	175.73	Aug. 5	11.27
44	Willys Overland	6 1/2	282.26	Aug. 5	11.47
100	" "	6 5/8	654.00	Aug. 5	10.53
5	American Beet Sugar	29 5/8	146.93	Aug. 6	10.21
20	Allis Chalmers	31 3/8	623.70	Aug. 5	12.11
10	American Can	26 1/2	263.10	Aug. 5	11.27
28	American Sugar	66 1/4	1,849.68	Aug. 5	11.27
20	Central Leather	33 1/8	658.70	Aug. 5	11.47

No. of Shares	Description	Price	Sold Amount	Date Executed	Time Executed
25	Certainteed Products	21¾	539.00	Aug. 6, 1921	11.54
15	Amer. Hide & Leather Pfd.	50⅞	760.28	Aug. 5	2.40
10	Chesapeake & Ohio	55⅞	556.85	Aug. 5	12.49
15	Cuban American Sugar	16¼	241.42	Aug. 5	11.27
17	China Copper	22⅝	382.04	Aug. 5	12.29
35	Chile Copper	10	344.39	Aug. 5	11.27
10	Great Northern Ore	27⅞	277.25	Aug. 5	11.27
15	St. Paul Common	27⅛	404.03	Aug. 5	2.50
10	" " Pfd.	41⅝	414.35	Aug. 5	11.47
19	Cerro De Pasco	25⅞	488.02	Aug. 5	11.00
9	Chicago, Rock Island A	75⅞	681.17	Aug. 5	1.55
11	General Electric	117½	1,290.41	Aug. 5	11.00
2/100	" "	116	1.28	Aug. 5	1.02
50	General Asphalt	53⅜	2,659.25	Aug. 5	11.00
20	Greene Cananea	20⅞	413.70	Aug. 5	12.41
100	International Nickel	14	1,384.00	Aug. 5	(10.14)
200	" "	13¾	2,718.00	Aug. 5	(10.53)
25	" "	13⅞	342.85	Aug. 5	11.00
5	Midvale Steel	24¾	147.38	Aug. 5	11.00

No. of Shares	Description	Price	Sold Amount	Date Executed	Time Executed
100	Loews Theatre	11¾	1,156.00	Aug. 5, 1921	10.23
50	Middle States Oil	11⅝	573.55	Aug. 5	11.00
2½	" " "	11¼	27.05	Aug. 5	11.53
600	Sears Roebuck Scrip	95	586.50	Aug. 5	11.36
3	Libby	9 in Chicago	24.98	Aug. 9	11.39
2	Texas Company		.29		
22	Midwest (or Standard Oil of India)	70½	2,094.96	Aug. 5	11.04
5	Stand. Oil of New Jersey Fef.	107⅝	536.93	Aug. 16	10.19
5	Standard Oil of New Jersey Co.	135¼	677.25		
	This purchase of S. O. N. J. Com. and sale of S. O. N. J. Pfd. was to clear books because of a short and long caused by 5 S. O. N. J. Com. being transferred for Myron Morland when 5 S. O. of N. J. Pfd. should have been issued in his name. Error made by Irving Whitehouse Co. in July, 1921.				
$1000	Chile 6's—1932	71¾	737.17	Aug. 5,	12.16
$1000	St. Paul 4's—1925.	76⅜	769.69	Aug. 5	12.16
$2000	International Tel. Sales & Eng. 5–1924.	75½	1,519.32	Aug. 6	11.16

Of all the securities above listed, Irving Whitehouse Company owned only the following, which sold at the price set out below:

15	Royal Dutch	$ 762.63
50	Transcontinental Oil	375.50
10	American Can Company	263.10
333	Canadian Copper	12.77
	Total	$1,414.00

The rest belonging to customers of Irving Whitehouse Company, by far the greater amount being the property of marginal dealers. The following securities were the only ones that had been paid for in cash, the price that each brought on the forced sale appearing opposite the security:

25	Shares Pure Oil Stock	$ 655.35
14	Shares U. S. Rubber	725.34
30	Shares General Motors	301.80
15	Shares St. Paul Common	404.03
10	Shares St. Paul Preferred	414.35
5	Shares Chicago, Rock Island and Pacific "A"	378.42
100	Shares Loew's Theater	1,156.00
30	Shares Northern Pacific	2,296.80
10	Shares General Electric	1,173.10
	Total	$7,505.19

At the time of making each of said sales, Hutton & Co. passed the net sum realized from the sale to the credit of Irving Whitehouse Company on its books. These securities were held as collateral security for an indebtedness due Hutton &

Co. from the bankrupt of $37,690.01, and there was realized from the sale of all the securities $48,-155.28; after all of said sales had been made by Hutton & Co. the amount remaining of the money realized from the sales, after so satisfying Hutton & Co.'s claim, to wit; $10,465.27 was transmitted to F. K. McBroom, Receiver. Thereafter certain other sums were received by McBroom, and upon the appointment of W. S. McCrea as trustee he was ordered to deduct from the amount he had on hand the receivership claims and expenses and turn the balance over to said McCrea. Pursuant to this order he delivered to said Trustee the sum of $15,149.00 which sum the trustee still has on hand, and it appears certain that the sums coming to the said McCrea in his capacity as trustee will not exceed $30,000.00, from which he must deduct all proper expenses and preferred claims, including his and his attorney's compensation together with any sums found to be due these petitioners, before the balance may be turned over to the creditors. At no time after said receiver received the said $10,465.27 did the amount of money in his hands fall below that amount until after he had turned over the funds in his hands to the trustee.

Most of the said claims, amounting to $211,098.27 were due to the fact that the bankrupt had been paid the purchase price in certain instances in full for the purchase of securities through Hutton & Co. which the bankrupt did not deliver, or that the claimants had ordered on margin to be purchased

through Hutton & Co. stocks or other securities and had put up collateral in the way of stocks or bonds with the bankrupt which the bankrupt either sold or deposited with Hutton & Co. as collateral for its account and such securities were sold by Hutton & Co. and no accounting had with the customer.

As to the various claims involved it should be remembered that each of these transactions followed in general outline the [9] course of dealings described above, and that it is only the details of importance in each particular case that are set out here.

Oscar Lantor, represented by S. Edelstein as his counsel, on June 21, 1921, ordered through the bankrupt twenty (20) shares of Northern Pacific stock, and the said bankrupt for the purpose of filing said order, ordered the said stock in its own name through Hutton & Company, and the stock was bought by Hutton & Company for the credit of the bankrupt, and the purchase price charged to the bankrupt. The said order was by wire, and on the same day the said bankrupt advised the said Oscar Lantor by wire that he had purchased the said twenty (20) shares of Northern Pacific stock, and on June 24, 1921, the said Oscar Lantor remitted in full to the said bankrupt the sum of Thirteen Hundred Forty-eight and 50/100 ($1348.50) dollars in payment of said stock, and on June 25, 1921, the said bankrupt acknowledged the receipt of the remittance, and in said acknowledgment advised the said Oscar Lantor that the twenty (20) shares of Northern Pacific

stock was ordered transferred to the name of the said Oscar Lantor. On June 30, 1921, the bankrupt ordered the said twenty (20) shares of Northern Pacific stock through Hutton & Company to be transferred in the name of the said Oscar Lantor, but said telegram was either missent or was miscarried, but there is no evidence Hutton & Co. received such order. On several occasions prior to August 3, 1921, the said Oscar Lantor called upon the said bankrupt for his stock and was advised that the same was being transferred. On July 18, 1921, the said bankrupt wired Hutton & Company enquiring why said stock had not been transferred in accordance with their message of June 30, 1921, at which time Hutton & Co. notified the bankrupt that the order of transfer had never been received.

The said Oscar [10] Lantor had no account with the said bankrupt prior to the transaction mentioned, never authorized the said bankrupt to hypothecate said stock with Hutton & Company nor to deal with said stock. The said Oscar Lantor had no knowledge that the said stock was being held by Hutton & Company for collateral for any indebtedness due it from the said bankrupt. The said bankrupt at divers times promised to have the transfer of said stock made in the name of Oscar Lantor, but such transfer was never made nor the stock delivered to the said Oscar Lantor up to the time of the appointment of said receiver.

David Ackerman, represented by Wakefield & Witherspoon, being the owner of one hundred (100) shares of Loew's Theatre stock, prior to August 3,

1921, delivered said stock to the bankrupt under an agreement whereby the bankrupt was to loan said stock on behalf of said claimant to E. F. Hutton & Co. to be used by said E. F. Hutton & Co. as collateral for its loans in New York, with the understanding between said bankrupt and said claimant that said Hutton & Co. would pay the claimant the prevailing call money rate of interest thereon. The referee specifically finds that said claimant did not authorize the bankrupt to pledge said stock with Hutton & Co. as collateral for the bankrupt's account; that the bankrupt did deposit said stock with Hutton & Co. as collateral for bankrupt's account, and the said stock was never returned to the claimant; that said stock was in the possession of Hutton & Co. at the time of the appointment of the receiver for the bankrupt by the Superior Court of Spokane County, Washington, and was sold by Hutton & Co., with other stock to liquidate the bankrupt's indebtedness to it, as referred to elsewhere in these findings.

Stanley Hodgman, represented by Wakefield & Witherspoon, on July 11, 1921, placed an order with the bankrupt for 5 shares of Chicago, Rock Island & Pacific Preferred "A" 7% stock, and before the appointment of receiver had fully paid for and demanded delivery of said stock. That upon the said order being placed, [11] the bankrupt on July 14, 1921, placed an order for the said stock for the purpose of complying with its contract with Hutton & Co., which last mentioned company purchased the said stock on said order at the price,

with commission, of $366.63; the said stock being purchased for the account of bankrupt and the purchase price charged against the bankrupt, but said stock was never delivered to the claimant.

Hazel Mowers, represented by Graves, Kizer & Graves, on or about February 16, 1921, delivered to Irving Whitehouse Company one $1,000 Chicago, Milwaukee & St. Paul bond bearing interest at 4% per annum and maturing in 1825, and instructed the company to sell the same. Later on, or about March 7, 1921, she ordered the bankrupt to purchase for her one $1,000 Chile Copper bond bearing interest at 6%, maturing in 1932. Thereafter, in April of 1921, she ordered five shares United States Rubber Company stock, five shares of Canadian Pacific Railway Company and two shares of American Agricultural Company stock. These last mentioned securities, together with the Chile Copper Company bond, were purchased on the installment plan, but Miss Mowers desired delivery of the shares of stock last mentioned and therefore placed with Irving Whitehouse Company as collateral security one $1,000 Chicago, Rock Island & Pacific bond, one $1,000 Chicago, Milwaukee & St. Paul bond maturing in 1932, and one $1,000 Chesapeake & Ohio bond, agreeing that the company might hold the same, together with the Chile Copper Company bond above referred to, as collateral security for the amount remaining due on the aforesaid shares of stock, Irving Whitehouse Company thereafter pledged all the above securities, including the Chicago, Milwaukee & St. Paul bond delivered for sale, with Hutton &

Co. Petitioner Mowers made various payments and received [12] delivery of the American Agricultural Company and the Canadian Pacific Railway Company stock. On July 27, 1921, she still owed Irving Whitehouse Company the sum of $1,837.90, and the company was holding in pledge with Hutton & Co. the aforesaid bonds and also five shares of United States Rubber and five shares of Northern Pacific Railway. On that date, the bankrupt instructed Hutton & Co. to sell the following bonds belonging to this petitioner; the $1,000 Chesapeake & Ohio bond, the $1,000 Chicago, Rock Island & Pacific bond, and the $1,000 Chicago, Milwaukee & St. Paul bond maturing in 1932. The result of this sale was, if it may be applied, to convert the debt of $1,837.90 previously owed by Hazel Mowers to a balance in her favor of approximately $350. On the 3d day of August, 1921, the bankrupt was holding in pledge with Hutton & Co. the following securities:

5 shares of Northern Pacific Railway Co. stock
5 shares United States Rubber Co. stock
1 $1000 Chicago, Milwaukee & St. Paul bond maturing in 1925
1 $1000 Chile Copper Company bond maturing in 1932

the last two being the identical bonds placed in pledge. These securities were sold in the manner described in the list set out above.

Mabel Conner, represented by Graves, Kizer & Graves, on or about April 13, 1921, ordered the company to purchase for her on the installment

plan five shares of Northern Pacific Railway Company stock, and put up at that time as collateral one $1,000 Chicago Railway Company bond. The bankrupt pledged both the shares of stock which were purchased and the bond with Hutton & Co., and thereafter, on July 27, 1921, wrongfully instructed Hutton & Co. to sell the aforesaid bond. As the result of such sale, if the proceeds may be so applied, the debt owned by Mabel Connor to the bankrupt was converted into a balance in her favor of approximately $350. The five shares of Northern Pacific Railway Company stock were sold in the manner described in the list set out above. [13]

Maude Mowers, represented by Graves, Kizer & Graves, on July 6, 1921, ordered the bankrupt to purchase for her twenty-three shares of stock of the Northern Pacific Railway Company and ten shares of stock of the Canadian Pacific Railway Company, and at the time paid the full purchase price. The Irving Whitehouse Company, however, failed to deliver such securities, but permitted them to remain in pledge with Hutton & Co. and allowed them to sell the Canadian Pacific Railway Company stock prior to August 3, 1921. The twenty-three shares of Northern Pacific Railway stock were sold in the manner described in the list set out above.

L. C. Ream, represented by Graves, Kizer & Graves, on July 5, 1921, ordered the bankrupt to purchase for him twenty-five shares of Pure Oil Company stock and paid a certain sum down, promising to pay the balance. On July 11, 1921, he

paid this balance, and on July 12, 1921, ordered the bankrupt to purchase for him twenty-five additional shares of the same security, and at that time paid the full purchase price. The securities were all purchased through Hutton & Co. and were left in pledge with them by the bankrupt. They were sold in the manner described in the list set out above.

H. E. Woodland, represented by Graves, Kizer & Graves, on the 15th day of January, 1921, ordered the bankrupt to purchase for him fifteen shares of Northern Pacific Railway Company stock and paid part of the purchase price, promising to pay the balance. On July 8, 1921, he paid the balance due and requested delivery. Irving Whitehouse Company, however, permitted Hutton & Co. to retain the said Northern Pacific Railway Company stock in pledge, and these securities were sold in the manner described in the list set out above.

T. S. Lane, represented by Allen, Winston & Allen, being the owner of a $2,000 International Tel. Sales and Eng. 6% bond due in 1924, a long time prior to August 3, 1921, delivered said bond to the bankrupt together with other securities as collateral security [14] for a marginal account which said Lane had with the bankrupt. Prior to August 3, 1921, the bankrupt had converted securities which had been ordered by said Lane and collateral which had been delivered to the bankrupt as collateral security for said Lane's account to an extent that the debit balance of said Lane on his marginal transaction had been changed into a credit

balance in favor of said Lane. Long prior to said August 3, 1921, the bankrupt had in turn placed said $2,000 bond with E. F. Hutton & Company as collateral security for the bankrupt's account with said Hutton & Company, and said bond remained with said Hutton & Company until after the receiver was appointed on August 3, 1921, and was sold as shown above, the amount realized from said sale being $1,519.32.

On January 4, 1923, said Lane filed with the Referee in Bankruptcy, his claim against the bankrupt estate in the sum of $43,719.87; on January 9, 1922, said Lane filed his amended claim with the referee in the sum of $103,689.87; on October 16, 1922, the referee made an order regarding the recasting of claims, the effect of which was that the securities should be figured as of their value on August 3, 1921, unless the claimant should be able to show that they were converted at an earlier date, and would then be entitled to place the values as of the date of the conversion; on November 14, 1922, the said Lane filed with the referee his second amended claim in the sum of $85,530.06; heretofore a dispute arose between said Lane and the Trustee in Bankruptcy regarding a preference which the Trustee claimed had been received by said Lane in the sum of $6,700; this dispute was settled by the execution of a written agreement between Lane and the trustee that said Lane should pay to the trustee $5,700, and that the claim of said Lane against the bankrupt estate was assigned as collateral security to secure the payment of said sum

of $5,700. This claimed preference of $6,700 arose out of the fact that immediately prior to the appointment of the receiver [15] in the state court, the bankrupt, without said Lane's knowledge, caused said sum to be deposited in a New York bank to the credit of said Lane; prior to the failure said Lane had given to the bankrupt a note for $7,000 executed by him for which he received no consideration, and this note was pledged by the bankrupt with the Fidelity National Bank with other securities for an obligation due from the bankrupt to said bank; had said transfer of money not been made the result would have been that the debt due from the bankrupt to the Fidelity National Bank would have been reduced by the money so deposited to the credit of said Lane. The $2,000 debenture of the International Tel. Sales and Eng. Co. was included in each of the claims filed by said Lane with the referee, the claimant claiming an indebtedness due to the conversion of said debenture.

F. D. Allen, of counsel for said Lane, on or about October 17, 1922, received from the referee a copy of the order of October 16, 1922, above referred to; he thereupon proceeded to investigate to determine the date of the conversion of the securities of said Lane, and then discovered that said debenture had been sold in the manner and at the time shown above; he communicated this information to said Lane who then, for the first time, had actual knowledge of the facts as to the time and manner when said debenture was sold or had gone into the hands of the receiver.

Irving Whitehouse, the president of the bankrupt, had been employed by said Lane in business enterprises in Butte, Montana, some years prior to August 3, 1921, had after the bankrupt had commenced operations in New York traded with it extensively; about the Friday preceding the appointment of the receiver, checks drawn by the bankrupt company were dishonored, information of this fact was given to F. D. Allen, one of the bankrupt's attorneys; as a result thereof a conference was held in which said Lane either participated or of [16] which he had knowledge, and as a result thereof, an investigation was then made and conferences had with certain accountants of the bankrupt, with the result that prior to the time of the failure said Lane knew that the bankrupt was hopelessly insolvent and that it had been kiting checks; that it had an overdrawn bank account, and that it had pledged and sold large amounts of the securities of its customers; claimant further went to the Fidelity National Bank and made investigation there as to the status of the bankrupt's account, ascertaining that it was overdrawn to the extent of about $20,000 and that large amounts of securities belonging to said Lane and other customers had been pledged, and many of them sold. Said Lane is a man of wide experience and had he gone to the books of the bankrupt corporation he could have discovered with but little difficulty the fact that the debenture in question was in the possession of Hutton & Company, as security for Hutton's advances to the bankrupt, and had not been

sold prior to the time of the appointment of the receiver. Said Lane has filed with the referee his consent that in passing upon his claim for reclamation of said fund, that the referee may make such order as will do equity herein.

Charles Theis, represented by Fabian B. Dodds, prior to April 10, 1921, ordered through the bankrupt, 30 shares of American Hide & Leather, preferred, and one I. L. Flagler ordered through the bankrupt 10 shares of the same stock; the bankrupt in turn ordered this stock through Hutton & Company, and the stock was purchased by Hutton & Company on the order of the bankrupt. On May 10, 1921, Hutton & Company held 40 shares of this stock for the account of bankrupt, and there were no other customers of the bankrupt who were long on this stock at the time the receiver was appointed August 3, 1921, and the bankrupt owned no Hide & Leather stock except that held with Hutton & Company. On May 10, 1921, 25 shares of the said stock was sold by Hutton & Company on the [17] order of the bankrupt, and the proceeds converted by the bankrupt; the remainder of 15 shares continued to be held by Hutton & Company until after the receiver was appointed in the said court, and was sold as shown above, and in point of time as to the other securities as shown elsewhere in this stipulation. On August 3, 1921, at the time the receiver was appointed, said Theis and said Flagler had a credit balance on the books of the bankrupt due to the conversion of their securities. I. L. Flagler has not appeared in this special proceeding in any manner whatever.

H. Sidney Collins, represented by John King, on July 8, 1921, ordered through the bankrupt, 10 shares of American Telephone and Telegraph Co. stock, and paid in full for same. The bankrupt in turn, for the purpose of performing its contract with Collins, ordered the said stock through Hutton & Company, and it was purchased by Hutton & Company. On August 2, 1921, prior to the appointment and qualification of the receiver Hutton & Company on the order of the bankrupt sold all American Telephone and Telegraph stock which it held for the bankrupt and applied the proceeds toward the liquidation of the indebtedness due it from the bankrupt for which the stock was held as collateral.

On or about July 19, 1921, Augusta W. Howell placed an order with Irving Whitehouse Company for ten (10) shares of General Electric Company stock, and was charged by Irving Whitehouse Company with the full purchase price thereof with commissions, amounting to Eleven Hundred Ninety-one ($1191.00) Dollars. Immediately thereafter said Irving Whitehouse Company, in compliance with said order, bought from Hutton & Company, its New York correspondent, for said Augusta W. Howell ten (10) shares of said General Electric Company stock. On July 26, 1921, said Augusta W. Howell paid said Irving Whitehouse Company said sum of Eleven Hundred Ninety-one ($1191.00) [18] Dollars, which paid for the said stock in full, and directed said Irving Whitehouse Company to deliver said stock to petitioners. On the 3d day

of August, 1921, Hutton & Company held for the account of the bankrupt ten (10) shares of said General Electric Company stock. Hutton & Company also held for the account of the bankrupt one and two-hundredths (1.02) shares of General Electric stock purchased for another customer who had ordered one and two-hundredths (1.02) shares from bankrupt. There were no other customers in General Electric stock, and the bankrupt was not carrying any of such stock for its own account.

Said Augusta W. Howell filed a claim for said sum with the receiver in said Superior Court and also filed a claim for said sum in the above-entitled court. Prior, however, to filing either of said claims, and on or about the 2d or 3d day of August, 1921, Mr Kimmel and Mr. Blum of the Union Trust Company, acting for Miss Howell, went to the office of the Irving Whitehouse Company and asked whether the bankrupt had purchased the stock so ordered and were informed or understood that such stock had not been ordered and was not on hand, and said claims were filed by said Augusta W. Howell with that understanding and belief. Upon discovery of the facts and on or about November 1, 1922, and prior to the declaration of any dividend by the bankrupt's estate, filed her withdrawal of her claim as a creditor for money paid the bankrupt, and has never received any dividend as a general creditor for money paid the bankrupt, and has never received any dividend as a general credi-

tor, and has elected to stand upon her petition to reclaim the proceeds of the stock.

As to Alexander Stephens, represented by McCarthy, Edge & Lantz, the facts were as follows:

Testimony of Alexander Stephens, for Plaintiffs.

ALEXANDER STEPHENS testified substantially as follows: [19]

"I had a balance on deposit with Irving Whitehouse Company for some five or six months prior to January 5, 1921, amounting to $465.00. On that date I went to the Irving Whitehouse Company and asked them to purchase for me such amount of the New Cornelia stock as my money on deposit would pay for in full. They figured it up for me and said that my money would purchase thirty shares and leave a balance of about $15.00. I do not remember giving any written order, or any order whatever, or for any fixed number of shares, but I understood that I was to get 30 shares.

"A few days later they sent me a statement or told me that they had purchased on my account 30 shares of the stock, and that on account of change in price that the purchase, including their commission, amounted to $15.50 more than my money. I disputed this and doubted that they had paid such price and requested that proof be submitted that they had paid for the stock the price they claimed, and they promised to supply the same, but never did so. The matter was simply let drag along and I never demanded my money back or in any way repudiated the transaction and never demanded the

(Testimony of Alexander Stephens.)

delivery of the stock. I was billed for the balance of $15.50, with interest thereon, monthly by the Irving Whitehouse Company until the time of the receivership and bankruptcy, and herewith submit a sample of one of the bills or statements referred to above. They told me when I purchased the stock that it was a stock which could not be purchased on a margin and that it would have to be paid for in full purchase price when purchased, and I understood it was not a marginal transaction. I am willing to pay the $15.50 balance with interest thereon, or permit it to be deducted from a distribution to me in accordance with my petition herein."

Testimony of J. C. Bird, In His Own Behalf.

Mr. J. C. BIRD, accountant for bankrupt, testified substantially as follows: [20]

"That on or about January 5, 1921, another employee of Irving Whitehouse Company brought me an order for 30 shares of New Cornelia stock which I immediately executed. The price paid including the commission actually was $15.50 more than the money Mr. Stephens then had on deposit. It is the custom of brokers to take orders for specific numbers of shares, and we cannot execute an order in New York except for a definite number of shares. I would not consider this a marginal transaction as it was about fully paid for and the amount had no relation to the market fluctuations, but our practice was to carry as a marginal transaction any stock on which there was some balance due, no matter

(Testimony of J. C. Bird.)

how small, and we considered we had the right to hold stock purchased in pledge until the full purchase price was paid, and this was the way in which we carried this transaction and is the general custom of stockbrokers. The New Cornelia transaction had with Mr. Stephens was the only transaction which was ever had with Irving Whitehouse Company by Mr. Stephens or anyone else with reference to that class of stock, and the stock purchased was for the account of Mr. Stephens."

As to the claimant O. W. Wittmer, represented by E. B. Quackenbush, the facts are as follows:

Testimony of O. W. Wittmer, In His Own Behalf.

O. W. WITTMER, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. QUACKENBUSH.)

Q. Mr. Wittmer, you may state how this account was handled with Hutton & Co., through the Whitehouse Co.

A. Well, this Middlestates Oil, a hundred shares of it, was purchased through Wolff & Co., of New York, and it was purchased on deposit of $780.00 worth of German Government bonds as collateral. That amount was afterwards transferred to Hutton & Co., through Irving Whitehouse dealing with me, and immediately after the account [21] was transferred Whitehouse Co. notified me that Hutton would not accept German Government bonds as collateral for the account, and in lieu thereof I

(Testimony of O. W. Wittmer.)

put up cash to the extent of—I made three payments, $250.00 at one time, $100.00 at another, and $150.00 at another. My arrangement with Whitehouse & Co. was on what they call a payment plan, not a marginal account in which a man signs a release of the stock he buys; no release of that kind was ever signed.

Q. Did you ever consent to— A. No, sir.

Q. —the use of your securities for any other purpose?

A. No, sir; I told them very emphatically before the account was transferred that I wanted to make it absolutely safe it would not be sold out, and that was the stipulation and the agreement. On the payment of the last amount of money that receipt and agreement was prepared and handed to me.

Q. Did you ever consent at any time to Whitehouse obtaining possession of these bonds?

A. No, sir.

Q. That is, the German Government bonds, 60,000? A. No, sir.

Q. When did you first know he had taken possession of them?

A. I did not know anything about it until I got back here after the failure had occurred.

Q. What time was that?

A. I came back about the latter part of August.

Q. When did you leave here?

A. I left here the 25th day of May.

Q. Immediately when you got that information did you make an effort to get these bonds?

A. I most certainly did.

(Testimony of O. W. Wittmer.)

Q. Where did you find they were? [22]

A. Well, for a long time I did not find out about them, except everything was on—

Q. Did you ever go over to their office to try to find out? A. Yes, sir.

Q. Did you get the information?

A. Finally I got the information from Mr. Byrd.

Q. What did you do in an effort to get them?

A. We entered suit.

Q. First did you make an effort to get them from the bank?

A. I wrote to the bank and they informed me—

Mr. WILLIAMS.—Just a moment. I object to that as hearsay, and further it is not the best evidence.

The WITNESS.—What do you mean, Mr. Williams?

Mr. WILLIAMS.—That is, what the bank may have said to you by letter is not the best evidence.

The REFEREE.—Sustain the objection.

Mr. QUACKENBUSH.—Did you make a demand on the bank for these bonds? A. Yes, sir.

Q. Did they give them to you? A. No, sir.

Q. And later what did you do?

A. I gave them even the numbers of each bond.

Q. Did they have those bonds?

A. Yes, sir, they admitted they had them.

Mr. WILLIAMS.—I move to strike that as hearsay, what they admitted.

The REFEREE.—Well, Mr. Byrd testified they had them.

(Testimony of O. W. Wittmer.)

Mr. WILLIAMS.—Yes, there is no doubt about that.

Mr. QUACKENBUSH.—Were you ever able to get possession of the bonds? A. No, sir.

Q. What else did you do towards getting them?

A. Well, I instituted suit against them and made every effort to get them without letting it go to suit. [23]

Q. Found out eventually you had to abandon it because they had a claim you could not beat?

Mr. WILLIAMS.—Just a minute. I object to that as a conclusion.

Mr. QUACKENBUSH.—Why did you abandon the suit?

A. Principally because they held them and did not acknowledge my rights in there, said they were put up by Irving Whitehouse.

Mr. WILLIAMS.—I object to that as hearsay.

The REFEREE.—Sustain the objection.

Mr. QUACKENBUSH.—You have never been able to recover them?

A. No, sir; I have not been able to recover them.

Q. Now, state the condition of the account from that time on, from the time you paid $250.00, as you know it to be.

A. Well, I only know what the books showed. The book showed that fifty shares of the stock had been—

Mr. WILLIAMS.—We have already got that in evidence.

(Testimony of O. W. Wittmer.)

Mr. QUACKENBUSH.—Do you know what the value of the bonds were on June 10, 1921?

A. Yes, sir.

Q. What was it?

Mr. WILLIAMS.—I think I will object to this witness testifying; he has not shown himself qualified to testify.

The WITNESS.—That is what you had this gentleman here to testify.

Mr. QUACKENBUSH.—Did you look up the market report of those bonds for the month of June, to-day, or of the marks?

A. Yes, sir; I went down to the library this morning and they would not let me take the large books in which these were away from the library, so I copied them under date of June 10, to June 15th.

Q. What were those books?

Mr. WILLIAMS.—Just a minute. May I see your figures before I object?

The WITNESS.—Yes, that is per thousand.

Mr. WILLIAMS.—I object to it as not being the best evidence. I [24] do not want to be technical about it, but we have not those papers here to see what they show the condition of them.

The REFEREE.—There is nothing I can do but sustain the objection.

The WITNESS.—Mr. Mallette, who was just here said that the records show from the 5th of June to the 16th of June, they varied from 16 down to 12½.

Mr. WILLIAMS.—I object to what Mr. Mallette said.

(Testimony of O. W. Wittmer.)

Mr. QUACKENBUSH.—What did you take those off of, Mr. Wittmer?

A. The "New York Times."

Q. The "New York Times"? A. Yes, sir.

Q. The general market reports as made on those dates in the "New York Times"?

A. Yes, sir. From each paper each day.

Q. Are those figures you have there a correct transcription of them?

The REFEREE.—I have sustained objection as to his testimony as to that.

Mr. QUACKENBUSH.—I understood here we could use the books or papers.

Mr. GRAVES.—He cannot testify.

Mr. QUACKENBUSH.—Refreshing your memory from the market reports as you know them to be, you may state if you know what the prices of those German marks were on the 10th day of June.

Mr. WILLIAMS.—Just a minute. I object. The report he has seen in the paper would be the best evidence, not his recollection of what it was.

The REFEREE.—There is no doubt about that.

Mr. QUACKENBUSH.—Can we use the "Review"?

Mr. WILLIAMS.—I won't object to the "Review."

Mr. QUACKENBUSH.—Now, Mr. Wittmer, at any time did you sign any document or contract or paper or anything of that kind authorizing Whitehouse or Hutton to dispose of those bonds, or of the Middlestates [25] Oil stock?

(Testimony of O. W. Wittmer.)

A. No, sir; there was no release given or anything of the kind.

Q. Did you sign the ordinary purchaser's contract with Whitehouse? A. No, sir.

Q. Or with Hutton & Co. from them? A. No.

Mr. GRAVES.—What do you mean by ordinary purchaser's contract?

Mr. QUACKENBUSH.—That is where they sign the right to hypothecate and all that.

Mr. GRAVES.—There is no contract of that kind except the taking of the receipt.

The WITNESS.—Well, that is on the receipt.

Mr. GRAVES.—There is no contract signed at the time that the customer goes in and opens his account with them.

The WITNESS.—When he purchases without paying for them, there always is.

Mr. McCARTHY.—When he buys on a margin, there always is.

Cross-examination.

(By Mr. GRAVES.)

Q. Now, at this time this was the only agreement, this embodies all of the agreement entered into between yourself and Irving Whitehouse Company? I am referring to Wittmer's Exhibit 3.

A. That is the only written agreement; yes, sir.

Q. Any oral agreement you entered into, was made at the same time or about the same time?

A. Well, practically the same thing; the account was transferred a little before that.

Q. Any oral agreement you made was made prior to the date of this written agreement?

(Testimony of O. W. Wittmer.)

A. Yes, sir

Q There was no oral agreement subsequent to the date of this? A. No, sir. [26]

Q. At all times you were indebted on your installment transaction for the purchase price of these one hundred Middlestates Oil up to the 3d of August, 1921?

A. Not according to their books, no sir; according to their statement, I was.

Q. As I say, you had never paid the full purchase price of these Middlestates Oil up to the 3d of August, 1921? A. No, sir.

Q. And before that time you were indebted to the Whitehouse Company in the amount remaining over these installments that you had paid from month to month?

A. Well, I want to answer that question right but according to their records I was not in debt to them, but not according to their statement, I was.

Q. Well, had you prior to the 3d of August, 1921, paid the full purchase price of 100 Middlestates Oil to Irving Whitehouse Company? A. No, sir.

Mr. GRAVES.—All right.

Redirect Examination.

(By Mr. QUACKENBUSH.)

Q. Did you know they had converted your German marks before the 3d of August?

Mr. WILLIAMS.—I object to that as a conclusion.

A. No.

Mr. QUACKENBUSH.—Did you know that Irv-

(Testimony of O. W. Wittmer.)

ing Whitehouse had taken possession of these German government bonds and applied them on his own account to the National City Bank of Seattle?

Mr. GRAVES.—I object, that is incompetent, irrelevant and immaterial. Under the custom proved the broker may repledge any securities that are up on a marginal transaction in any way that he wants, but it makes no difference whether Mr. Wittmer knew they were dealing in [27] these securities in the manner in which they were entitled to.

Mr. QUACKENBUSH.—They could not transfer it and not give him credit for it.

Mr. GRAVES.—Your Honor will take judicial notice.

The REFEREE.—I know that is the general custom.

Mr. QUACKENBUSH.—When you say you owed him, do you take into account the proceeds of any of this collateral of yours?

A. Absolutely not.

Mr. GRAVES.—I object, that is incompetent, irrelevant and immaterial.

The Referee.—What was that question? (Question read.)

Mr. GRAVES.—I object on the ground that it is incompetent, irrelevant, and immaterial. We are trying to ascertain the true basis or the true outlines of the account between Mr. Wittmer and Irving Whitehouse Co., and he may not take credit for any stuff he has put up there for collateral.

The REFEREE.—Let him answer, whether it is material or not. I will decide later, but he is going away so he may answer.

A. (Answer read.)

Mr. QUACKENBUSH.—That is all.

Mr. GRAVES.—That is all.

Witness excused.

Testimony of J. C. Byrd, for Plaintiffs.

J. C. BYRD testified as follows:

"Mr. Wittmer had carried on an account with Wolf & Company of New York, and at the time of the transfer of his account to Hutton & Company was indebted to Wolf in the sum of approximately $1400.00 to secure which Wolf held as collateral 100 shares of Middlestates Oil and German government bonds for 60,000 marks. He caused this account to be transferred from Wolf & Company to Hutton & Company through the agency of Irving Whitehouse Company. The transaction was consummated by Hutton & Company paying the debit balance due to [28] Wolf & Company and charging Irving Whitehouse Company with the amount so paid. Irving Whitehouse Company, in turn, charged Wittmer for the same amount. The collateral carried with Wolf & Company was turned over to Hutton & Company, but Hutton & Company refused to carry the 60,000 government bonds because of the weakness of the market. Wittmer was a marginal dealer, and both the Middlestates Oil and the 60,000 government bonds were held as collateral by Irving Whitehouse Company on his account and the Ger-

(Testimony of J. C. Byrd.)

man bonds were shown as collateral on the statements rendered him by Irving Whitehouse Company. The bonds were shipped to Spokane after Hutton & Company refused to hold them, and were pledged by Irving Whitehouse Company on its own account with the National City Bank of Seattle some time in June of 1921. Wittmer did not sign the usual contract signed by customers of Irving Whitehouse Company, nor any other contract or agreement with Whitehouse & Company. Wittmer's exhibit 3 is a receipt for $250.00 paid by him to cover five monthly payments of $50.00 each, including all payments due up to and including the 15th of October, 1921. The receipt contains an agreement that the stock would not be closed out prior to that date. The only effect of this contract is to provide that if the market should fall greatly so that with the money put in Wittmer would still need more to make his margin, he would nevertheless not be sold out since he had paid ahead and would on that date make good what the market had lost. Disregarding any conversion of securities of Wittmer, the amount he owed Irving Whitehouse Company on August 3, 1921, was $855.69; 50 shares of Middlestate Oil belonging to Wittmer had, however, been sold by Irving Whitehouse Company prior to that date for $553.00, so that if he received credit for such sale he would still be indebted to Irving Whitehouse Company in the sum of $300.00 [29] disregarding any questions of the conversion of the German bonds. It is the custom in all mar-

ginal transactions carried on between the broker and his customer that the broker may rehypothecate any securities which he holds on the customer's account so long as the customer remains indebted to him. Neither Irving Whitehouse Company nor any of its customers, with the exception of Mr. Wittmer, were at the time of the failure long in Middlestates Oil, and there were at that time 52½ shares of that stock carried by Hutton & Company on the Irving Whitehouse account which appear to be some of the identical shares which were transferred from Wolf & Company to Hutton & Company."

Whereas, on or about September 29, 1922, the Referee on the petitions of the claimants David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Oscar Lantor, and Maude Mowers made an order on the facts relating to such claimants above set forth, which order has been certified to the District Court for review, but has not been passed upon, and it is the desire to have the rights of all the claimants named in this stipulation disposed of by one order, subject to review. It is Further Agreed by said David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Oscar Lantor, Maude Mowers and the Trustee that the said previous order of the Referee may be set aside and vacated and for naught held, and that the whole matter shall now be disposed of in one order, subject to review, and if in order to carry out the purpose it is necessary that the District Judge shall

make an order cancelling the said previous order made by the Referee, that such course shall be taken.

Dated, this —— day of April, 1923.

WAKEFIELD & WITHERSPOON
Attorneys for David Ackerman, Stanley Hodgman and Augusta W. Howell.

GRAVES, KIZER & GRAVES,
Attorneys for L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland and Maude Mowers.

[30]

S. EDELSTEIN,
Attorney for Oscar Lantor.

FABIAN B. DODDS,
Attorney for Charles Theis.

McCARTHY, EDGE & LANTZ,
Attorneys for Alexander Stephens.

ALLEN, WINSTON & ALLEN,
Attorneys for T. S. Lane.

E. QUACKENBUSH,
Attorney for O. W. Wittmer.

_____,
Attorney for H. Sidney Collins.

DANSON, WILLIAMS & DANSON,
Attorneys for W. S. McCrea, Trustee.

The foregoing stipulation and agreed statement signed and dated at Spokane, Washington, this —— day of August, 1923.

WAKEFIELD & WITHERSPOON,
Attorneys for David Ackerman, Stanley Hodgman and Augusta W. Howell.

GRAVES, KIZER & GRAVES,
Attorneys for L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland and Maude Mowers.

S. EDELSTEIN,
Attorney for Oscar Lantor.

FABIAN B. DODDS,
Attorney for Charles Theis.

McCARTHY, EDGE & LANTZ,
Attorneys for Alexander Stephens.

ALLEN, WINSTON & ALLEN,
Attorneys for T. S. Lane.

E. B. QUACKENBUSH,
Attorney for O. W. Wittmer.

DANSON, WILLIAMS & DANSON,
Attorneys for W. S. McCrea, Trustee.

Approved:

JEREMIAH NETERER,
District Judge, Presiding Who Determined the Issue Presented. [31]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812.

In the Matter of IRVING WHITEHOUSE COMPANY, Bankrupt.

Order Directing Distribution of Moneys to Petitioners.

In the petitions of David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Oscar Lantor, Maud Mowers, Charles Theis, Alexander Stephens, Augusta W. Howell, Thaddeus S. Lane, O. W. Wittmer and Sidney H. Collins.

A consolidated hearing of the claims of the above petitioners was made before me on a stipulation of fact entered into between these petitioners and W. S. McCrea, as Trustee in Bankruptcy, the petitioners being represented by their respective counsel, and the Trustee by his, and from the record herein it appears that W. S. McCrea, as Trustee in Bankruptcy, now has in his possession and wrongfully withholds from the petitioners whose names are set out below the sum of Ten Thousand Four Hundred Sixty-five and 27/100 ($10,465.27) Dollars, which sum is composed of the proceeds of the sale of certain securities, many of which belonged to these petitioners; and that a notice has been duly published and an order duly entered to the effect that any person who had or claimed to have any

interest in this said fund should present his petition before the 5th day of February, 1923, or be estopped to set up any such claim; and that no persons other than the above petitioners have appeared in these proceedings; and that the aforesaid sum is insufficient to reimburse each petitioner in full for the loss sustained by the sale of his securities, but that the claim of O. W. Wittmer against this fund is inferior and subject to the claims of the other petitioners who are entitled to take priority over him in the distribution of said fund; and that the said fund now wrongfully withheld [32] by the said W. S. McCrea from these petitioners should be distributed among them in the following manner, to-wit:

David Ackerman	is entitled to the sum of	$1156.00
Stanley Hodgman	is entitled to the sum of	369.71
L. C. Ream	is entitled to the sum of	655.35
Hazel Mowers	is entitled to the sum of	1936.36
Mabel Connor	is entitled to the sum of	169.50
H. E. Woodland	is entitled to the sum of	509.50
Oscar Lantor	is entitled to the sum of	673.00
Maud Mowers	is entitled to the sum of	775.10
Thaddeus S. Lane	is entitled to the sum of	1519.32
Charles Theis	is entitled to the sum of	760.28
Augusta Howell	is entitled to the sum of	1172.91
Alexander ..... Stephens	is entitled to the sum of	384.92
	Total	$10,081.95

It further appears that O. W. Wittmer is entitled to receive the balance remaining from such fund after the aforesaid sums have been distributed to the other petitioners. The amount he is, therefore, entitled to is $383.32.

It further appears that the proceeds of the sale of the securities belonging to Sidney H. Collins are not included in this fund and that therefore this petitioner is not entitled to any sum whatever from said fund.

WHEREFORE, IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED that said W. S. McCrea, as Trustee in Bankruptcy herein, deliver to the aforesaid petitioners the several sums set opposite their names and deliver to the said O. W. Wittmer the balance remaining over, to-wit: the sum of $383.32.

Dated this 27th day of April, 1923.

SIDNEY H. WENTWORTH,
Referee in Bankruptcy.

Filed in the U. S. District Court, Eastern District of Washington, May 18, 1923. Alan G. Paine, Clerk. By Eva M. Hardin, Deputy. [33]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

IN BANKRUPTCY—No. 3813.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt.

Certificate of Referee.

To the Honorable J. STANLEY WEBSTER, District Judge: I, Sidney H. Wentworth, the Referee in charge of this proceeding, hereby certify:

That in the course of said proceeding an order, the original of which is handed up herewith, was made and entered on the 27th day of April, 1923.

That on the 7th day of May, 1923, the trustee of said bankrupt estate and O. W. Wittmer, one of the petitioners hereinafter mentioned, feeling aggrieved thereat, each filed a petition for a review thereof, both of which petitions were granted.

That the order to be reviewed was made upon the petitions of David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Charles Theis, Alexander Stephens, Augusta W. Howell, T. S. Lane, O. W. Wittmer, and Sidney H. Collins that the trustee return to them certain securities, or, in lieu thereof, the amount realized therefrom.

That the facts brought forth by the evidence introduced before me on the hearing of said petitions are undisputed, and, with three exceptions, are stated in a stipulation signed by counsel for all of the petitions and handed up herewith. The facts above referred to as not stated in the stipulation are a part of the records in this proceeding and were considered by me in making the order to the review. These facts are:

(1) That upon the petition of Oscar Lantor, David Ackerman, [34] Stanley Hodgman, Hazel

Mowers, Mabel Connor, Maude Mowers, L. C. Ream and H. E. Woodland an order was made by me on January 23d, 1923, requiring all persons having or claiming to have an interest in the fund in controversy, to show cause before me on February 5, 1923, at 10:00 o'clock A. M. why the said fund should not be distributed under my order of September 29th, 1922 (mentioned on pages 25 and 26 of the stipulation as to facts), directing personal service thereof upon all known claimants to said fund and publication thereof, and ordering that such services be sufficient to bar all claimants from asserting any rights to the aforesaid fund, who should not appear to prove an interest therein on said return day. This petition, and the order to show cause, with the acceptance of service of known claimants and the affidavit of publication thereof are handed up herewith. (2) That no one may have an interest in said fund, except the petitioners above mentioned, has attempted to assert a claim to said fund up to the date of this certificate. (3) That the sum of $15,-149.00 mentioned on page 7 of said stipulation has been in the hands of the trustee since February 9th, 1922.

That the questions presented by this review, briefly stated, are:

(1) Are all parties who may have an interest in said fund, except those who have already appeared, now barred from asserting their claims thereto?

(2) Has the trustee any interest in said fund as against those of the aforesaid petitioners who did

not consent to the pledge of their securities with Hutton & Co.?

(3) Has the trustee any interest in said fund as against those of the aforesaid petitioners who consented to the pledge of their securities with Hutton & Co.

(4) Does the order to be reviewed distribute the fund among the petitioners in accordance with their respective rights? [35]

In addition to this general statement of the questions before the Court, I set forth the errors of the referee alleged in the two petitions for a review.

The Trustee contends that the referee erred as follows:

(1) In making a finding in such order that the Trustee now has in his possession and wrongfully withholds from petitioners or any of them the sum of $10,465.26 or any part thereof, or from any of the claimants the amounts allowed them by the said order.

(2) In making a finding that the said sum of $10,465.27 is composed of the proceeds of the sale of certain securities many of which belonged to said petitioners or any of them.

(3) In making a finding that any notice has been given of any order entered which in any manner affects any other person who might be interested in said fund of $10,465.27, except those who appeared in such proceeding.

(4) In making a finding that the said fund of $10,465.27 should be distributed as provided by said order.

(5) In making a finding that the said sum of $10,465.27 or any part thereof was realized from the sale of any securities belonging to the claimants David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Charles Theis, Alexander Stephens, Thaddeus S. Lane, Augusta W. Howell and O. W. Wittmer, or either or any of them.

(6) In making a finding that said sum of $10,-465.27 includes $760.28 from the sale of any securities of Charles Theis or any amount derived from the securities of said Charles Theis in excess of three-fourths of $760.28.

(7) In ordering the Trustee to pay the said several petitioners or any of them the amounts specified in said order, or any amount.

Particularly, the Trustee has always insisted and now insists that none of the said claimants other than Lane and Theis have traced the proceeds of any of their securities into the hands of the Trustee [36] and as to said Theis, he has traced but a three-fourths interest in the fifteen shares of American Hide & Leather stock which survived the Hutton & Co. sale. That as to the said claimant Lane, he is entitled to no relief, since he elected to take as a general creditor.

The petitioner Wittmer alleges the following errors on the part of the referee:

(1) That said findings and order are contrary to law.

(2) That said findings and order are contrary to and against the evidence.

(3) That said findings and order, in so far as it denies to this petitioner the right to have distributed to him the said $666.86 is without sufficient evidence to support it.

(4) That said findings and order, in so far as they adjudge that the said Irving Whitehouse Company, Bankrupt, did not convert the German Government Bonds in the sum of 60,000 marks is against the law and the evidence and without sufficient evidence to support it.

(5) That the findings and order, in so far as they find and hold that this claimant did not have a credit balance with the said bankrupt at the time of its insolvency, is contrary to and against the law and the evidence.

(6) That said referee erred in his conclusions of law from the evidence and stipulations made by the parties as to the facts adduced on said hearing.

I hand up herewith for the information of the Judge the following papers:

(1) The order to be reviewed.
(2) The trustee's petition for a review.
(3) O. W. Wittmer's petition for a review.
(4) Stipulation of counsel as to facts.
(5) The petitions of said petitioners.
(6) The trustee's answer to said petitions, [37]
(7) Reply of Augusta W. Howell, O. W. Witmer and T. S. Lane to the trustee's answer to their respective petitions.
(8) The petition and order to show cause above mentioned with aceptance of service and affidavit of publication of order to show cause.

(9) Wittmer's exhibits 1, 2, and 3.
(10) Alexander Stephens' exhibits 1, 2, and 3.

Respectfully submitted,
SIDNEY H. WENTWORTH,
Referee in Bankruptcy.

May 17, 1923.

Filed in the U. S. District Court, Eastern District of Washington, May 18, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [38]

In the United States District Court for the Eastern District of Washington Northern Division.

No. 3812—BANKRUPTCY.

In the Matter of IRVING WHITEHOUSE COMPANY,

Bankrupt.

Decision.

Filed July 18, 1923.

The bankrupt was a stockbroker, a greater portion of his business being marginal transactions. Upon an order for the purchase of *specifi-* securities and payment of not less than twenty per cent of the purchase price, the bankrupt advanced the balance and held the security as collateral, obtaining the right to repledge the same and thereupon borrowed from Hutton & Co., New York brokers, the necessary amount to complete the purchase, and repledged the security, it having on deposit with Hutton & Co. a considerable amount of security; and upon receiving an order to purchase listed stock on

the New York exchange it was forwarded to Hutton & Co. in its own name, and its account debited, and the purchased security was added to the bankrupt's collateral, and the account of the customer was debited by the bankrupt to the difference between the marginal deposit and the purchase price. Some purchasers paid in full and permitted the stock to remain with the bankrupt, who treated it in the same way as with Hutton & Co., while others deposited their security to cover the marginal deposit, which security was deposited with Hutton & Co. with the security purchased. Some securities endorsed in blank were delivered to the bankrupt for safe keeping, or for sale, and the securities were forwarded to Hutton & Co. to bankrupt's account. When stocks purchased were paid for in full the purchasers did not press for delivery, and the bankrupt, instead of redeeming such stock from the lien pledge permitted it to remain with Hutton & Co. and for some time prior to adjudication the bankrupt converted and caused to be converted securities of customers to its own use. On August 3, 1921, a receiver was appointed for the bankrupt by the State Court. On this day Hutton & Co. held as collateral deposited by the bankrupt $48,000, to secure an indebtedness of $37,690.01. The securities, upon the order of the court, were directed to be sold by the receiver, and the surplus, after the payment of the indebtedness due to Hutton & Co. from the bankrupt, was paid to the receiver. 100 shares Loew's Theatre; 30 shares New Cornilia; Middlestate Oil 52½ shares; Nor. Pac. 30 shares; 14 shares

U. S. Rubber; 1 $1000, Chile Copper bond, maturing 1932; 1 $1000. C. M. ST. P. bond maturing 1925; 25 shares Pure Oil; 5 C. R. I. & Pac.; 40 shares Amer. H. & Leather; 1 $2000. Inter. Tel. Sales & Eng. bond; 10 shares General Electric. The petitioners assert preferred claims against these several stocks. The trustee contends that the preferred claim should be denied, and the fund distributed to all of the creditors in proportion to their respective claims.

DANSON, WILLIAMS & DANSON, Attorneys for TRUSTEE.

GRAVES, KIZER & GRAVES, Attorneys for L. C. REAM, HAZEL MOWERS, MABEL CONNOR, H. E. WOODLAND and MAUDE MOWERS.

S. EDELSTEIN, Attorney for OSCAR LANTOR.

FABIAN B. DODDS, Attorney for CHARLES THEIS.

McCARTHY, EDGE & LANTZ, Attorneys for ALEXANDER STEPHENS.

E. *QUACKENBACH,* Attorney for SIDNEY COLLINS..

ALLEN, WINSTON & ALLEN, Attorney for T. S. LANE.

WAKEFIELD & WITHERSPOON, Attorneys for DAVID ACKERMAN, STANLEY HODGMAN and AUGUSTA W. HOWELL.

NETERER, District Judge.—Equity will treat alike those similarly situated.

In re Toole, 274 Fed. 342. Creditors of equal equities are in the same class, and the omission of some to make specific claim does not enlarge the right of such as do make claim, In re Pearson, 233 Fed. 519, since the claimant must recover on the strength of his own title, In re Pearson, *supra;* Duel v. Hollis, 241 U. S. 523; In re [39] J. C. Wilson & Co., 252 Fed. 631. The securities "lacked individuality, and like facsimile storage receipts for gold coin could properly be treated as indistinguishable tokens of identical value," when issued by the same obligor, Duel vs. Hollis, *supra.* There are several classes of claimants, but I think under the stipulation, those holding securities of the same class, stand in the same relation to the fund which they claim. As between the claimants there is no difference between the fully paid and the partially paid securities, since the sale in either event was complete and title vested, and unpaid securities being held as collateral does not change the status. It is unnecessary to determine whether Lane and Theis had traced their stock into the fund in issue in view of the conclusion arrived at, the holders of a particular security being in a separate class, Duel vs. Hollis, *supra.* Each petitioner is therefore entitled to recover the *pro rata* of the fund as the security held by him bears to the total of such security sold by the receiver issued by the same obligor. The holdings as per stipulation are as follows: Ackerman, Loew's

Theatre, 100 shares; Stephens, New Cornelia, 30 shares; Wittmer, Middlestate Oil, 52½ shares; Mabel Connor, Nor. Pac. 5 shares; Maud Mower, Nor. Pac. 23 shares; Lantor, Nor. Pac. 20 shares; Woodland, Nor. Pac. 15 shares; Hazel Mower, Nor. Pac. 5 shares, Rubber 5 shares, 1 $1000 C. M. St. P. Bond maturing in 1925; 1 $1000 Chile Copper bond, maturing 1932; Ream, Pure Oil, 50 shares; Hodgman, C. R. I. & Pac. 5 shares; Theis, Amer. H. & Leather, 30 shares; Lane, $2000 Inter. Tel. Sales & Tel. Sales & Eng. bond; Howell, Gen. Elec. 10 shares. The amount due from the respective holders of named securities which has not been paid shall be deducted from the amount due each and retained by the trustee. I do not think that Lane or others are estopped from asserting this claim, because they filed a general claim. The order of the Referee is set aside and the matter is referred to the referee to make the computations, and order of allowance as indicated.

NETERER,
U. S. District Judge.

Filed in the U. S. District Court, Eastern District of Washington. July 21, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [40]

In the United States District Court for the Eastern District of Washington, Northern Division.

No. 3812—IN BANKRUPTCY.

In the Matter of IRVING WHTEHOUSE COMPANY,

Bankrupt.

Order on Review of Referee's Decision.

This cause came on regularly for hearing before the undersigned, one of the Judges of the above court, on the petition of the Trustee for a review of the order made by Hon. Sidney H. Wentworth, Referee of this court, on the petitions of David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Oscar Lantor, Maud Mowers, Chas, Theis, Alexander Stephens, Augusta W. Howell, Thaddeus S. Lane and O. W. Wittmer, for an order directing the Trustee in Bankruptcy to deliver to said petitioners certain securities, or the proceeds realized therefrom, the Trustee W. S. McCrea appearing by his attorneys Danson, Williams & Danson, the petitioners L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland and Maud Mowers appearing by their attorneys Graves, Kizer & Graves, the petitioner Oscar Lantor appearing by his attorney S. Edelstein, the petitioner Chas. Theis appearing by his attorney Fabian B. Dodds, the petitioner Alexander Stephens appearing by his attorneys McCarthy, Edge & Lantz, the petitioner O. W. Wittmer appearing by his attorney E. B. Quacken-

bush, the petitioner Thaddeus S. Lane appearing by his attorneys Allen, Winston & Allen, and the petitioners David Ackerman, Stanley Hodgman and Augusta W. Howell appearing by their attorneys Wakefield & Witherspoon, and the court having heard the arguments and having taken the cause under advisement, and having heretofore, and on July 18, 1923, filed its decision in writing, and being now fully advised in the premises, [41]

IT IS ORDERED, that the said order of the said Referee be, and the same is reversed and set aside and the Referee is directed to make computations and order of allowance as follows: From the indebtedness due from the Bankrupt to E. F. Hutton & Co., for which the securities sold after August 3, 1921, were held as collateral, there be deducted $1,414, the amount realized from the sale of the securities owned by the bankrupt and to which the Bankrupt's customers had no claim; that thereafter there be applied to the payment of the indebtedness due to Hutton & Co. from the proceeds realized from the sale of all the remaining securities, a *pro rata* share from all such securities so far as necessary to the satisfaction of the Hutton & Co. claim. If the interest of the bankrupt in any particular security is not sufficient to pay the *pro rata* indebtedness of such security to Hutton & Co. the deficiency thereof be supplied from the interest of the owners of the remaining of such security, but if the interest of the bankrupt is sufficient to pay the *pro rata* indebtedness of such security then the balance of the remaining

of the proceeds realized from the sale of each security be ordered paid to any petitioner owning such security, according to his ownership, and where there are several owners to a particular security, that the balance to the credit of such security be prorated according to such ownership, after deducting any indebtedness due from such owners for the purchase of such security.

IT IS FURTHER ORDERED, That none of the said petitioners are estopped from asserting their claim through having filed general claims.

Dated this 28th day of July, 1923.

JEREMIAH NETERER,
District Court Judge.

Filed in the U. S. District Court, Eastern District of Washington. July 31, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [42]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812—IN BANKRUPTCY.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation,

Bankrupt.

Petition for Appeal.

L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Maude Mowers, Oscar Lantor, Charles Theis, Alexander Stephens, O. W. Wittmer, T. S. Lane, David Ackerman, Stanley Hodgman and

Augusta W. Howell, feeling themselves aggrieved by the order of this court made and entered herein on the 31st day of July, 1923, do hereby appeal from said order adjudging the Trustee to have an interest in the fund derived from the securities pledged by Hutton & Company and reversing the order of the Referee to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignments of error filed herein, and pray that this appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said order is based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California.

Dated this 6th day of August, 1923.

GRAVES, KIZER & GRAVES,
Attorneys for L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland and Maude Mowers.

S. EDELSTEIN,
Attorney for Oscar Lantor.

FABIAN B. DODDS,
Attorney for Charles Theis.

McCARTHY, EDGE & LANTZ,
Attorneys for Alexander Stephens. [43]

E. B. QUACKENBUSH,
Attorney for O. W. Wittmer.

ALLEN, WINSTON & ALLEN,
Attorneys for T. S. Lane.

WAKEFIELD & WITHERSPOON,
Attorneys for David Ackerman, Stanley Hodgman and Augusta W. Howell.

Filed in the U. S. District Court, Eastern District of Washington. August 7, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [44]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812—IN BANKRUPTCY.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation,

Bankrupt.

Order Allowing Appeal.

The foregoing petition of L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Maude Mowers, Oscar Lantor, Charles Theis, Alexander Stephens, O. W. Wittmer, T. S. Lane, David Ackerman, Stanley Hodgman and Augusta W. Howell, for an appeal from that certain order made and entered in the above-entitled proceeding in bankruptcy on the 31st day of July, 1923, to the United States Circuit Court of Appeals for the Ninth Circuit is hereby granted and allowed, and the appeal bond is hereby fixed at one thousand dollars.

WM. B. GILBERT,
Circuit Judge.

Filed in the U. S. District Court, Eastern District of Washington. August 7, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [45]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812—IN BANKRUPTCY.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation,

Bankrupt.

Assignments of Error.

Come now L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Maude Mowers, Oscar Lantor Charles Theis, Alexander Stephens, O. W. Wittmer, T. S. Lane, David Ackerman, Stanley Hodgman and Augusta W. Howell and say that in the order made and entered in the above-entitled proceeding on the 31st day of July, 1923, there is manifest error, and file the following assignments of error committed and happening in the said proceedings upon which they will rely in their appeal from said order.

1. In reversing the order of the Referee.
2. In refusing to affirm the order of the Referee.
3. In adjudging the Bankrupt or the Trustee entitled to any portion of said fund until after these claimants had been paid in full.
4. In failing and refusing to order said fund to be the property of said claimants so far as necessary to pay them in full.
5. In failing and refusing to order all other claimants estopped from claiming any part of said fund.

6. In failing and refusing to hold said show cause order the proceedings thereunder barred any other claimants to any part of said fund.

7. In failing and refusing to order that the said Trustee had no property right in said fund.

8. In failing and refusing to order the entire indebtedness of Hutton & Company to be paid from any interest the Bankrupt or the Trustee might have in said securities, or any of them. [46]

9. In ordering these claimants, or any of them, to pay any of the sum due Hutton & Company.

10. In ordering the interest of these claimants in said fund, or any part thereof, to be subject to the claim of Hutton & Company.

11. In ordering the interest of said claimants, or any of them to be prorated according to the ownership in each security after deducting any indebtedness, or to be prorated at all.

12. In failing and refusing to award to those claimants who identified their particular securities among those held in the Hutton & Company pledge the amount obtained for such securities on their sale.

13. In failing and refusing to award claimants who identified in the Hutton & Company pledge securities similar to those which the Bankrupt was under obligation to be holding for them, the full value of such a proposition of the identified securities as the number of shares each of such claimants were entitled to bore to the total amount

of such shares that the bankrupt was under obligation to be holding for all his customers.

GRAVES, KIZER & GRAVES,
Attorneys for L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland and Maude Mowers.

S. EDELSTEIN,
Attorney for Oscar Lantor.

FABIAN B. DODDS,
Attorney for Charles Theis.

McCARTHY, EDGE & LANTZ,
Attorneys for Alexander Stephens.

E. B. QUACKENBUSH,
Attorney for O. W. Wittmer.

ALLEN, WINSTON & ALLEN,
Attorneys for T. S. Lane.

WAKEFIELD & WITHERSPOON,
Attorneys for David Ackerman, Stanley Hodgman and Augusta Howell.

Filed in the U. S. Dist. Court, Eastern Dist. of Washington. August 7, 1923. Alan G. Paine, Clerk. By A. P. Rumburg. Deputy. [47]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812—IN BANKRUPTCY.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation,
Bankrupt.

Citation on Appeal.

United States of America,—ss.

The President of the United States to W. S. McCrea, as Trustee in Bankruptcy of the Estate of Irving Whitehouse Company, a Corporation, Bankrupt, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California, on the 4th day of September, 1923, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the Eastern District of Washington in the Matter of Irving Whitehouse Company, Bankrupt, wherein L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Maude Mowers, Oscar Lantor, Charles Theis, Alexander Stephens, O. W. Wittmer, T. S. Lane, David Ackerman, Stanley Hodgman and Augusta W. Howell are appellants and W. S. McCrea as Trustee in Bankruptcy of Irving Whitehouse Company, Bankrupt, is the appellee to show cause, if any there be, why the order of the District Judge entered on the 31st day of July, 1923, reversing the order of the Referee entered on the 27th day of April, 1923, should not be corrected and speedy justice should not be done to the parties in that behalf. [48]

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 6th day of August, in the year of our Lord 1923.

WM. B. GILBERT,
Circuit Judge.

Attest:

_____,
Clerk.

By _____,
Deputy.

Copy of the within citation on appeal duly received this 7th day of August, 1923.

DANSON, WILLIAMS & DANSON,
Attorneys for Trustee and Appellee. [49]

[Endorsed]: No. 3812—In Bankruptcy In the District Court of the United States for the Eastern District of Washington, Northern Division. In the Matter of Irving Whitehouse Company, a Corporation, Bankrupt. Citation on Appeal. Filed in the U. S. District Court, Eastern Dist. of Washington. Aug. 7, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [50]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812.

In the Matter of IRVING WHITEHOUSE CO., a Corporation,

Bankrupt.

Praecipe for Transcript of Record.

To the Clerk of the District Court of the United States for the Eastern District of Washington, Northern Division:

You are hereby requested, in preparing your return to the citation on appeal in the above-entitled cause, to include therein the following:

1. Stipulation in the case.
2. Order and Certificate of the Referee.
3. Memorandum of the District Judge.
4. Order of the District Judge appealed from.
5. Petition for appeal.
6. Order allowing appeal.
7. Assignments of error.
8. Citation.
9. Praecipe for transcript of record, which comprises all the papers, records or other proceedings than those above mentioned which are necessary to be included by the Clerk of said Court in making up his return to said citation as a part of such record. [51]
10. Bond on Appeal.

GRAVES, KIZER & GRAVES,

Attorneys for L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland and Maude Mowers.

S. EDELSTEIN,

Attorney for Oscar Lantor.

FABIAN B. DODDS,

Attorney for Charles Theis.

McCARTHY, EDGE & LANTZ,

Attorneys for Alexander Stephens.

E. B. QUACKENBUSH,
Attorney for O. W. Wittmer.
ALLEN, WINSTON & ALLEN,
Attorneys for T. S. Lane.
WAKEFIELD & WITHERSPOON,
Attorneys for David Ackerman, Stanley Hodgman and Augusta W. Howell.

Filed in the U. S. District Court, Eastern District of Washington. August 7, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [52]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812.—IN BANKRUPTCY.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation,
Bankrupt.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS that we, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Maude Mowers, Oscar Lantor, Charles Theis, Alexander Stephens, O. W. Wittmer, T. S. Lane, David Ackerman, Stanley Hodgman and Augusta W. Howell, as principals, and American Surety Company of New York, a surety company authorized to do business in this district, as surety, acknowledge ourselves to be jointly and severally bound unto W. S. McCrea, as Trustee in Bankruptcy of the Estate of Irving Whitehouse

Company, a corporation, the bankrupt appellee in the above cause, in the sum of one thousand dollars, conditioned that

WHEREAS on the 31st day of July, 1923, in the District Court of the United States for the Eastern District of Washington, Northern Division, in a proceeding in bankruptcy depending in that court, wherein these principals were petitioners and the said W. S. McCrea, as such Trustee, was respondent, an order was entered against these said principals, and these said principals have obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and filed a copy thereof in the office of the Clerk of the Court to reverse the said order and a citation directed to the said W. S. McCrea, as such Trustee, citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco, State of California,

NOW if the said parties hereinbefore named shall prosecute this appeal to effect and answer all damages and costs if they fail to make their [53] plea good, then the above obligation to be void, else to remain in full force and virtue.

H. E. WOODLAND, MAUDE MOWERS, L. C. REAM, HAZEL MOWERS, MABEL CONNOR,

By PAUL H. GRAVES,

Their Attorney.

OSCAR LANTOR,

By S. EDELSTEIN,

His Attorney.

CHARLES THEIS,
By FABIAN B. DODDS,
His Atty.

T. S. LANE,
By ALLEN, WINSTON & ALLEN,
His Attys.

ALEXANDER STEPHENS,
By McCARTHY, EDGE & LANTZ,
His Attorneys.

O. W. WITTMER,
By E. B. QUACKENBUSH,
His Atty.

DAVID ACKERMAN, STANLEY HODGMAN and AUGUSTA W. HOWELL,
By WAKEFIELD & WITHERSPOON,
Their Attorneys.

[Seal]
AMERICAN SURETY COMPANY OF NEW YORK,

By J. B. WRIGHT,
Resident Vice-president.

Attest: W. L. BERRY,
W. L. BERRY,
Resident Assistant Secretary.

Approved this 6th day of August, 1923.

WM. B. GILBERT,
Circuit Judge.

Filed in the U. S. District Court, Eastern District of Washington, August 7, 1923. Alan G. Paine, Clerk. By. A. P. Rumburg, Deputy. [54]

Certificate of Clerk of U. S. District Court to Transcript of Record.

United States of America,
Eastern District of Washington,—ss.

I, Alan G. Paine, Clerk of the District Court of the United States for the Eastern District of Washington, Northern Division, do hereby certify that the foregoing pages constitute and are a true, complete and correct copy of all the record, pleadings, testimony and all proceedings had in said cause, as are necessary to the hearing of the appeal therein, in the United States Circuit Court of Appeals, and as is stipulated for by counsel of record herein, as the same remain of record, and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the order and decree of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, Seattle, Washington.

I further certify that I hereto attach and hereto transmit the original citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of Twenty-two Dollars and Twenty-five Cents, and that the said sum has been paid in full by Fabian B. Dodds, one of the attorneys for the petitioning creditors and appellants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court

at Spokane in said District this 16th day of August, 1923.

[Seal] ALAN G. PAINE,
Clerk. [55]

[Endorsed]: No. 4075. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Irving Whitehouse Company, a Corporation, Bankrupt. L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Maude Mowers, Oscar Lantor, Charles Theis, Alexander Stephens, O. W. Wittmer, T. S. Lane, David Ackerman, Stanley Hodgman and Augusta W. Howell, Appellants, vs. W. S. McCrea, as Trustee in Bankruptcy of the Estate of Irving Whitehouse Company, a corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed August 22, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.